## Closing

## **Executive Summary**

Section 7-1

This chapter describes the preparation, execution and recordation of the closing and internal control documents needed to consummate a Restructuring Plan for a Mark-to-Market debt restructuring transaction. It discusses the roles and responsibilities of the: PAE, owner, existing and new mortgagees, and their attorneys; title company and escrow agent; OAHP Preservation Office Director and business staff; and HUD Multifamily Hub or Program Center, Multifamily Claims Branch, Multifamily Notes Servicing Branch, Lender Approval & Recertification Branch, and Multifamily Insurance Operations Branch (MFIOB). Within sixty (60) days of the execution of the Restructuring Commitment by the owner, all closing documents should be properly executed and recorded, title policy issued, all funds disbursed, and escrow closed.

## **General Closing Roles and Responsibilities**

Section 7-3

- A. Special OAHP Preservation Office Delegations. The OAHP Preservation Office Director has the authority to execute Restructuring Commitments and OAHP loan documents, to modify existing mortgages, and to endorse mortgages for the Mark to Market program that are insured by FHA under Section 223(a)(7) of the National Housing Act. The authority for Section 542(c) HFA Risk-Sharing, and Section 542(b) GSE Risk-Sharing is with the local Multifamily Hub or Program Center.
- B. **PAE Responsibilities**. The PAE business staff and PAE closing attorney are responsible for successfully closing the restructured deal as approved by OAHP.
- C. Closing Escrow Agent (Third Party Fiduciary) Responsibilities. The Closing Escrow Agent will be responsible for handling the closing of each restructured deal according to the closing escrow instructions provided by the PAE attorney.

D. **Take-out Financing Closing Responsibilities**. The type of financing will determine which party is responsible for preparation of the take-out financing documents. The following matrix provides closing responsibilities based on financing alternatives:

# Closing Responsibilities by Financing Alternative\*

Type of Financing Alternative	Prepares Loan Documents**	Reviews Loan Documents	Conducts Restructuring/ Loan Closing
Modification of existing loan	Existing mortgagee attorney	PAE attorney	Existing mortgagee attorney acting with PAE attorney
FHA-insured Section 223(a)(7)	New mortgagee attorney	PAE attorney	PAE attorney
HFA risk-sharing or other state/local government	New mortgagee attorney	PAE attorney	New mortgagee attorney acting with PAE attorney
Conventional loan	New Mortgagee attorney	PAE attorney	New Mortgagee acting with PAE attorney
FHA-insured Section 221(d)(4) or 223(f)	New Mortgagee attorney	PAE attorney and HUD MF Hub or Program Center Housing staff and OGC attorney	Multifamily Hub or Program Center OGC attorney will handle closing of new 221(d)(4) or 223(f) mortgage in conjunction with the PAE attorney who closes the OAHP portion of the overall closing

<sup>\*</sup>The chart addresses the loan financing aspects of the closing, and not the mortgage restructuring function.

<sup>\*\*</sup>Refers to take-out financing documents; PAE Attorney always prepares the M2M loan documents

## **Working Parties**

Section 7-4

A. **PAE Responsibilities**. The PAE business staff and PAE closing attorney are responsible for the following:

#### 1. Business Staff

- a) Overall coordination of the closing of each mortgage restructuring transaction
- b) Select Closing Attorney
- c) Select Closing Escrow Agent (in conjunction with Closing Parties)
- d) Work with closing parties to select Title Company
- e) Review and approve Closing Attorney's work product; including review of all legal documents for accuracy, compliance with the approved deal, and consistency with the Form 7.19 Official Term Sheet, and Restructuring Commitment
- f) Verify that the mortgagee, servicer, and unpaid balance information in HUD's F47 System is correct and, if not, that the discrepancy has been reconciled and approved by the Preservation Office Closing Coordinator and the Headquarters Closing Specialist.
- g) Provide the initial (and any revisions) Official Term Sheet to the PAE Attorney and OAHP Preservation Office
- h) Work with PAE Attorney in the preparation and full execution of the Restructuring Commitment and Amendments
- i) Fax copy of fully executed Restructuring Commitment and all Amendments to OAHP HQ Closing
- j) Coordinate preparation of and receipt of the Section 223(a)(7) Firm Commitment Application Package from the New Mortgagee
- k) Review and recommend approval of Section 223(a)(7) Firm Commitment Application (pursuant to Appendix N)
- 1) Coordinate the execution of the Section 223(a)(7) Firm Commitment, and any subsequent amendments, with the OAHP Preservation Office Director
- m) If Firm Commitment is assigned by Mortgagee prior to closing, review new Mortgagee entity for acceptability and prepare assignment documentation for Preservation Office

- Director approval, send copy to local Multifamily Hub or Program Center
- n) Prepare and distribute Closing Parties Checklist (Form 7.7) to all parties
- o) Provide formal notification to existing mortgagee of pending restructure (Form 7.9) and provide copy of Restructuring Commitment
- p) Coordinate receipt of necessary closing information and documentation from existing mortgagee
- q) Coordinate preparation of Section 8 HAP Contract by OAHP Preservation Office
- r) Notify Multifamily Hub or Program Center of need for reservation of Section 8 HAP funds
- s) Coordinate the full execution of Section 8 HAP Contract by Multifamily Hub or Program Center Director and Owner to ensure timely closing
- t) Arrange for Rehabilitation Escrow Deposit Agreement (if applicable) including selecting the Contractor responsible for the cash management and repair review and providing for payment
- u) Prepare and forward Partial Payment of Claim/Closing package to OAHP Relationship Manager at least eighteen (18) days prior to scheduled closing date, and coordinate with OAHP HQ Closing staff
- v) Prepare and provide Closing Sources and Uses statement (Exhibit F) to Closing Escrow Agent and OAHP HQ Closing staff and coordinate with Closing Escrow Agent the preparation of the Final Settlement Statement, Final Disbursement Statement and Form 7.21
- w) Coordinate with the Multifamily Hub or Program Center the transfer of Section 8 contract administration responsibility, when appropriate
- x) Forward electronic copy of final underwriting model to OAHP Preservation Office Data Integrity Person immediately upon closing, and upload model into M2M MIS
- y) Update the M2M MIS in a timely fashion

### 2. PAE Attorney

a) Work with PAE business staff in the preparation (and full execution) of the Restructuring Commitment and Amendments

- b) Using the Official Term Sheet Form 7.19, review and certify that the Restructuring Commitment:
  - i. accurately reflects the approved restructuring plan and terms
  - ii. the form has not been altered, and
  - iii. any changes to the form have been approved in writing by OAHP HQ
- c) Draft M2M loan documents pursuant to the Restructuring Commitment, Official Term Sheet Form 7.19, the Instructions to PAE Attorneys in Appendix F, and this chapter
- d) Coordinate with Multifamily Hub or Program Center attorney to ensure a simultaneous closing when take-out financing is insured under Section 221(d)(4) or 223(f)
- e) Draft closing instructions for the Closing Escrow Agent (see 7-9A6)
- f) Provide title company with title instructions pursuant to Appendix F Title Instructions, and review pro forma title report
- g) Coordinate review of the M2M loan documents by OAHP Preservation Office Director
- h) Coordinate execution of restructuring documents by Preservation Office Director
- i) Review new title policy for accuracy pursuant to OPG Appendix F prior to closing
- j) When requesting review of all legal documents and execution of loan documents by OAHP Preservation Office Director, provide the Official Terms Sheet Form 7.19, a checklist of documents requiring execution and a letter, the first of four certifications submitted by the PAE Attorney, certifying the following:
  - i. the closing documents accurately reflect the approved Restructuring Plan and the Official Term Sheet
  - ii. the standard legal forms have not been altered, and
  - iii. any changes to the forms have been approved in writing by the OGC attorney assigned to OAHP
- k) In a Section 223(a)(7) transaction, provide to the OAHP Preservation Office Director the original executed new FHA-insured Note and submit the second of four certifications submitted by the PAE Attorney, a Certification of Closing

- Attorney, Form 7.8, to the OAHP Preservation Office Director requesting Endorsement of the new FHA-insured Note.
- When requesting a Partial Payment of Claim authorization from the OAHP Preservation Office Director, provide the third of four certifications submitted by the PAE attorney, a Certification of Closing, Form 7.11, certifying that the loan documents have been recorded, and that all funds except the FHA claim have been deposited with the Closing Agent and title policies have been issued
  - In a restructuring of a HUD-Held Note, or a non-HUD-held restructuring that does not require a 541(b) payment, provides to the OAHP Preservation Office a Certification of Closing, Form 7.14 in lieu of Form 7.11.
- m) The Certification of Closing Attorney (Form 7.8) and request for authorization for Partial Payment of Claim (Form 7.11) must not be submitted until the following have occurred, without exception:
  - i. Loan documents have been recorded
  - ii. Verification that all required funds except FHA claim have been deposited with Closing Escrow Agent
  - iii. Title policies have been issued
  - iv. Provide instruction to the OAHP Preservation Office Director regarding the faxing and forwarding of the original endorsed note to the new mortgagee
  - v. if there is a Section 223(a)(7) refinancing, prepare the HUD Closing Memorandum, Form 290
- n) Prepare the IRP reuse documentation as required in Appendix Q and forward a copy of the package to the new first lender. (old IRP schedule, new IRP re-use schedule and 236(s) Grant Agreement and Use Agreement, as applicable)
- o) Fax copies of new 1st lien Note, OAHP notes, mortgages, Form 7.16, interim or final signed Settlement Statement and Form 7.21, W-9 Form, copy of the 236 IRP reuse documentation and, if HUD is in 1st position after the restructuring (no takeout), a copy of the most recent tax bill to OAHP HQ Closing/Post-Closing Representative immediately (3 days max) after closing (unrecorded mortgages are acceptable at this time).
- p) Provide to OAHP Preservation Office Director a final certification (the fourth and final certification) on letterhead stating that all required actions have been taken, the Closing

- has been consummated and the Restructuring has been completed according to the guidelines and approved terms.
- q) In conjunction with the Closing Escrow Agent, prepares and executes Form 7.21 and Final Settlement Statement and provide OAHP HQ Closing written verification when all funds have been disbursed from the Closing Escrow.
- r) Prepare and distribute the Closing Docket pursuant to guidance in Chapter 8, if selected to do so by the PAE.
- B. Closing Escrow Agent (Third Party Fiduciary) Responsibilities. The Closing Escrow Agent will be selected by the PAE with the approval of all parties. The Closing Escrow Agent must be an experienced third party fiduciary, be bonded and insured, and have multifamily real estate closing experience. The Closing Escrow Agent must have an arms length relationship with all parties to the closing. It is recommended that the Closing Escrow Agent be part of a major title company. If not part of a major title company, the closing escrow agent must execute a Closing Protection Service Letter. The Closing Escrow Agent expense may be included in the transaction costs.

The following list identifies usual responsibilities of the Closing Escrow Agent. It is not all-inclusive and is intended as information only. The Closing Escrow Instructions prepared by the PAE Attorney will provide deal specific directions (see 7-9 A.6).

- 1. Capture all closing documents, including specific HUD documents, as listed in the Closing Documents Checklist (Form 7.2)
- 2. Prior to authorizing the 541(b) claim payment, OAHP HQ Closing will call the Closing Escrow Agent to verify:
  - a) that ALL required funds from all other parties have been received,
  - b) confirm wiring instructions, and
  - c) confirm amount anticipated from HUD.
- 3. Capture and forward via FAX to 202 708 5755 the following items to OAHP HQ Closing within three days of closing: a copy of the final settlement statement, the current property tax bill, M2M Notes, Mortgages, 236 Grant Agreement (if applicable), IRS Form W-9 for mortgagor entity and OAHP Form 7.16 Owner/Manager Information (The PAE may choose to provide some of these items.)
- 4. Capture and disburse all funds from the Closing Escrow. The only exceptions are funds that will be paid outside of closing (POC) such as escrows from old lender to new lender.

- 5. Provide recording instructions to the title company.
- 6. Prepare and submit to PAE Attorney and HQ Closing a disbursement statement and/or settlement statement reflecting the flow of funds through the closing escrow (refer to Section 7-7 below). Label the statement as Interim or Final depending on whether all funds have been received/disbursed.
- 7. In conjunction with the Closing Escrow Agent, prepare and execute Form 7.21 and Final Settlement Statement, providing OAHP HQ Closing written notification when all funds have been received and disbursed and the Closing Escrow has been closed out. Attach Final Settlement Statement to 7.21 (and Final Disbursement Statement if applicable).

## C. Owner and Owner's Attorney.

- 1. Owner initiates start of closing by executing the Restructuring Commitment
- 2. Owner is first to execute closing documents
- 3. Owner's attorney issues Opinion of Owner's Counsel (Form Legal Opinion in Appendix F) and, if applicable, FHA Opinion of Owner's Counsel
- 4. Owner pays into the Closing Escrow the required owner contribution reflected on Exhibit F and in the Closing Escrow Instructions (e.g., owner's portion of rehabilitation and transaction costs and any other owner funded items)
- 5. Owner executes final closing documents

#### D. OAHP Preservation Office.

- 1. <u>Relationship Manager and/or Preservation Office Closing Coordinator</u>
  - a) Ensures that the reconciliation of HUD's F47 System was completed and that any discrepancies were corrected (this must be completed before approval of the restructuring plan).
  - b) Monitors the closing process, assisting the PAE business staff and attorney
  - c) Acts as liaison between PAE and Preservation Office Director
  - d) Reviews and forwards Partial Payment of Claim Package to the OAHP HQ Closing staff at least sixteen (16) days prior to closing
  - e) Reviews and forwards HUD-Held Summary (Form 7.12) or Non-541b/Non-HUD Held Post Restructuring Summary

- (Form 7.13), and attachments (the Closing Package) to OAHP HQ Closing at least 16 days prior to Closing
- f) Reviews and updates Partial Payment of Claim/Closing packages prior to closing for all closings (verification of receipt of funds, etc.)
- g) Acts as liaison between PAE and OAHP HQ Closing for issues arising from the Partial Payment of Claim Package and Restructuring Commitment
- h) Coordinates approval and execution of Restructuring Commitment, Firm Commitment and final closing documents by Preservation Office Director and HUD (when appropriate). Reviews at a high-level the Closing Docket to ensure completeness, consistency and compliance with the approved deal

### 2. Preservation Office Director

- a) Executes Restructuring Commitment and Amendments after review using the Form 7.19 Official Term Sheet; Amendments must be numbered; a Final Administrative Amendment is required which must match the information contained in the Final Form 7.19 Official Term Sheet. The Final Official Term Sheet becomes part of the Final Administrative Amendment.
- b) Responsible for review of all legal documents for accuracy, completeness, consistency and compliance with approved deal, using the Form 7.19 Official Term Sheet and Restructuring Commitment.
- c) Executes all required legal documents as instructed by the PAE Attorney
- d) Executes Section 223(a)(7) Firm Commitment if applicable (if subsequently assigned or amended, executes approval)
- e) Receives Partial Payment of Claim/Closing Package from the PAE, prepares and executes forms as applicable
- f) Coordinates with the PAE Attorney, OAHP HQ Closing, and Closing Escrow Agent to facilitate claim payment
- g) Upon receipt of partially executed closing documents, Certification of Closing (Form 7.3), loan document checklist, pro forma title policy and opinions of the owner's and mortgagee's attorneys from the PAE Attorney, executes final closing documents as applicable and returns executed documents to the Closing Escrow Agent

- h) In a restructuring using Section 223(a)(7) financing, upon receipt of Certificate of Closing Attorney, Form 7.8:
  - i. verifies that endorsement panel on note is properly prepared and notarized,
  - ii. then endorses new mortgage note,
  - iii. faxes a copy of note and forwards original to new mortgagee and
  - iv. executes HUD Form 290
- Upon receipt of Certificate of Closing Attorney (Form 7.8, 7.11 and/or 7.14 as appropriate), authorizes the request for Partial Payment of Claim (or non-Claim closing) by the OAHP HQ Closing Coordinator after verifying funds are in place.

## E. HUD Multifamily Hub or Program Center.

- 1. When notified by OAHP Preservation Office, reserves or prepares to recapture Section 8 funding, as needed
- 2. Executes Section 8 HAP and Recapture Agreement, as needed, and notifies the PAE Attorney for coordination of contract in Closing Escrow
- 3. Where using Section 221(d)(4) or Section 223(f) FHA insured take-out financing, or Section 542(c) HFA Risk-Sharing or 542(b) GSE Risk-Sharing, the Multifamily Hub or Program Center executes a Firm Commitment and coordinates with PAE attorney for a simultaneous closing
- 4. Enters HUD 223(a)(7) Firm Commitment and Form 290 information into DAP
- 5. If Firm Commitment assigned prior to closing, enters into DAP.
- 6. Receives Transmission Memo and arranges for transition meeting
- 7. Receives Closing Docket and acknowledges receipt

## F. Existing Mortgagee or Loan Servicer (if HUD-insured at Closing).

- 1. Provides the PAE with the information necessary to compare the existing mortgage information (regarding mortgagee, servicer, and unpaid balance) to HUD's F47 system. If applicable, assists the PAE in assembling the documentation necessary to explain and resolve any discrepancy.
- 2. If a loan modification, an attorney representing the lender or current servicer of the existing FHA-insured mortgage should

- work closely with the owner's attorney to complete the closing documents and draft Settlement Sheet.
- 3. If applicable, mortgagee executes loan modification documents and forwards to the Closing Escrow Agent.
- 4. If the existing mortgage is to be paid off, executes and forwards to Closing Escrow Agent:
  - a) Release of Mortgage
  - b) HUD 9807
  - c) Certification of Current Mortgage Balance
- 5. If requesting a Section 541(b) Claim payment, prepares and submits to Closing Escrow Agent or PAE:
  - a) the Section 541(b) Claim form, and
  - b) Authorization letter and corporate resolution to allow Claim payment to be paid through the Closing Escrow.
- 6. Closes out existing MIP, taxes, insurance, reserve for replacement and other escrows based on language in the Restructuring Commitment and Closing Escrow Instructions,
  - a) Transmits existing escrow account balances to Closing Escrow, or
  - b) Transmits funds POC to new lender, or
  - c) Deducts existing escrow balances from final payoff figure and provides breakout of netting from payoff to HQ Closing the day of closing.

#### G. New Mortgagee or Loan Servicer

- 1. New Mortgagee's attorney works closely with the PAE attorney and the owner's attorney to prepare the closing documents and coordinates review of new loan documents to ensure consistency and accuracy
- 2. Executes applicable loan documents
- 3. At the appropriate time, wire transfers new first mortgage funds to the Closing Escrow Agent
- 4. Prepares check payable to HUD for upfront mortgage insurance premium and forwards to the Closing Escrow Agent, if new loan has new 223(a)(7) FHA mortgage insurance
- 5. Acts as post-closing Rehabilitation Escrow Account holder, if applicable

- 6. Establishes post-closing escrows for Reserve for Replacement, and taxes and insurance, as instructed in Closing Escrow Instructions
- 7. Sets up monthly billing to HUD for IRP payments, if applicable

#### H. Title Company

- 1. Provides preliminary title report
- 2. Provides pro forma title policy prior to closing pursuant to OAHP's guidelines
- 3. Records documents pursuant to closing escrow instructions
- 4. Issues final title policy prior to 541(b) payment disbursed

#### I. HUD Multifamily Claims Branch

- Branch Chief or designee receives Partial Payment of Claim Package from OAHP HQ Closing at least fifteen (15) days prior to closing
- 2. Reviews Partial Payment of Claim Package and notifies OAHP HQ Closing of any necessary changes
- 3. Receives authorization to request Section 541(b) Claim payment from OAHP HQ Closing Manager after all required actions have taken place
- 4. Submits Section 541(b) Claim payment request to Treasury Department
- J. HUD Multifamily Insurance Operations Branch. Where applicable (new 223(a)(7) take-out), receives from Closing Specialist and processes the following documents: HUD Form 290 ("Closing Memorandum"), new first Mortgage Note, Initial Premium Receipt, HUD Form 9807 ("Request for Insurance Termination"), HUD Form 92080 ("Mortgagee Change Form"), Request for Firm Commitment/Risk Sharing Authorization or Credit Subsidy Obligation.
- K. HUD Claims and Lender Approval & Recertification Branches. Where applicable, reviews documentation provided by the Closing Specialist and makes necessary adjustments to HUD's F47 System that resolve discrepancies between it and the mortgagee's and/or servicer's records.
- L. **HUD Notes Servicing Branch**. Handles HUD booking of new M2M debt. (see Section 7-12 for additional roles for existing HUDheld loans).

## **Pre-Closing**

Section 7-5

- A. **Restructuring Commitment**. The PAE and OAHP Preservation Office should coordinate closely to ensure that the owner and his or her attorney receive the necessary instructions to begin closing. [Pursuant to Chapter 4 of the OPG, the Restructuring Commitment cannot be executed prior to the completion of the Environmental Evaluation Form 4.4 and the Environmental Assessment and Compliance Findings, HUD Form-4128, available on HUDClips.]
  - 1. <u>Execution</u>. Preparation for closing starts when the owner executes the Restructuring Commitment (see Chapter 6) and:
    - a) the owner and new mortgagee both execute the Firm Commitment for FHA mortgage insurance, if the Restructuring Plan calls for FHA-insured financing;
    - b) the owner receives a commitment for conventional financing from a new mortgagee; or
    - c) Risk-share lender issues a Firm Approval/Commitment Letter, if the Restructuring Plan calls for financing under the HFA 542(c) or GSE 542(b) Risk-sharing programs.
  - 2. <u>Forwarding to PAE and OAHP</u>. The owner should return the Restructuring Commitment, and the lender or owner should return the original of any Firm Commitment to the PAE after execution. The PAE will forward the original Firm Commitment to the OAHP Preservation Office.
  - 3. Notifying OAHP Preservation Office. The PAE must update the Mark-to-Market MIS tracking system when it receives the Restructuring Commitment and the Firm Commitment executed by the owner, as required under the terms of the Restructuring Plan. The PAE should advise the OAHP Preservation Office if problems arise or are anticipated in closing the transaction.
  - 4. Entering 223(a)(7) in DAP. HUD must enter issuance of the Firm Commitment (and any subsequent assignment to another mortgagee) into DAP.
  - 5. Preliminary Closing Deadline. The PAE should set a preliminary closing date that is no more than sixty (60) days from the date the owner executed the Restructuring Commitment. The closing process should take no more than sixty (60) days to complete. The Restructuring Commitment expires at the end of the sixty (60) days unless OAHP provides a written extension executed by the original approving authority.
- B. Choosing the Title Company and Closing Escrow Agent (third party fiduciary). The PAE must select a title company and closing

- escrow agent satisfactory to all parties (see 7-4B and 7-4H). A key factor in selecting the title company and closing escrow agent is that there be no identity of interest relationships with the PAE, owner or attorneys.
- C. Closing Instructions from the PAE to the Owner. Upon receiving the fully executed Restructuring Commitment and any Firm Commitment, the PAE should forward to the owner and his or her attorney the following closing materials:
  - 1. <u>Transmittal Letter</u>. Explains mortgage restructuring closing and provides general instructions. (Form 7.1)
  - 2. <u>Closing Documents Checklist</u>. Lists mortgage restructuring closing documents for each mortgage financing alternative. (Form 7.2)
  - 3. <u>Closing Parties Checklist</u>. Identifies and provides contact information for key parties involved in the closing process. (Form 7.7)
- D. PAE Notice to the Existing Mortgagee of Debt Restructuring. The PAE must provide formal notification (Form 7.9) to the existing mortgagee of the debt restructuring, stating that the Restructuring Commitment constitutes authority for the existing mortgagee to accept prepayment conditioned on completion of restructuring and execution and recordation of the Use Agreement. Authority to accept prepayment expires simultaneously with the expiration of the Restructuring Commitment. A copy of the executed Restructuring Commitment is part of the formal notification. Further, the PAE should provide information regarding the closing escrow and request that the existing mortgagee provide the following to the closing escrow:
  - 1. Executed Application for Section 541(b) Payment (Form 7.6)
  - 2. Authorization for payment of claim to be made to the Closing Escrow Agent (or other) and official corporate resolution naming corporate officers (Authorization should be typed on mortgagee's letterhead and signed by authorized party.)
  - 3. Executed Release of Deed of Trust/Mortgage
  - 4. Executed Insurance Termination Request for Multifamily Mortgage HUD Form 9807.

## **Closing Escrow - Receipt of Funds and Disbursements**

Section 7-6

The Closing Escrow Agent is responsible for receiving and disbursing funds from the Closing Escrow, in accordance with the PAE Attorney's Closing

Escrow Instructions. The Closing Escrow must be fully funded prior to authorizing any disbursements. OAHP requires (see 7-4B) that Closing Escrow Agents be experienced, licensed and bonded third part fiduciaries, with no identity of interest with the parties to the transaction. Neither the PAE attorney, owner's attorney, nor lender's attorney are authorized to perform in this capacity.

- A. Funding the Closing Escrow. Funds that must be received in the Closing Escrow are addressed specifically in the Closing Escrow Instruction Letter (see 7-9A6) which is developed by the PAE Attorney based on the RC, and using the final Exhibit F, Sources and Uses of Funds statement. The following is a general overview of funds that are usually included in the Closing Escrow. (See also OPG Appendix R regarding other types of Sources typical to Additional Funds transactions.) It is important that the PAE Attorney clearly address in the Closing Escrow Instructions any sources on Exhibit F that will not flow through the Escrow and assure there are adequate funds available to close the transaction. Fund sources that must be captured include:
  - 1. Owner's Contribution. The owner must deliver the contribution amount as called for in the Restructuring Commitment and reflected on Exhibit F (for rehabilitation costs and all other costs), to the closing escrow for appropriate disbursement. (The only exception is if the owner is a housing cooperative.) It is not appropriate for the Closing Escrow Agent to reduce the required owner contribution by any surplus amount in the escrow at closing (see 7-6B.5. below)
  - 2. New Mortgage Proceeds. If there is take-out financing, the new mortgagee must deliver the loan amount to the Closing Escrow Agent for disbursement to the existing mortgagee or loan servicer and/or to the rehabilitation escrow account. The new mortgagee may net new escrow amounts from the funds going into the escrow but must provide a detailed breakout to HQ Closing the day of closing and the netting must be clearly reflected on the Final Settlement Statement (see 7-6C. below).
  - 3. Existing Escrow Balances Held by Mortgagee (e.g., Reserve for Replacement, Residual Receipts, MIP, taxes, insurance, etc.) The flow of funds from project specific reserve and escrow accounts (e.g., reserve for replacement, taxes, insurance, MIP, etc.) must be clearly addressed in the Closing Escrow Instructions and the Restructuring Commitment so that the Closing Escrow Agent knows to expect and require the funds in order to close. Paragraph #38 of the Restructuring Commitment will specify whether existing escrow balances are to be sent by the existing lender to the Closing Escrow for disbursal at Closing, if the existing lender will send those funds to new escrow holder after

- closing, or if the existing lender will net escrows from the final payoff disbursement. If the requirements differ for certain escrows, those escrows should be addressed separately in the RC.
- 4. Partial Payment of Claim. The 541(b) claim payment from the FHA insurance fund will be paid to the Closing Escrow Agent (or to the existing mortgagee or servicer as authorized) pursuant to the existing mortgagee's authorization for disbursement to the existing mortgagee in order to pay off the first lien. All other funds must be in place before HUD will authorize payment of the claim.
- 5. Sources received that are NOT reflected on Exhibit F Sources and Uses. Sometimes the Closing Escrow Agent will receive funds that are not listed on the Exhibit F Sources and Uses. Those Sources should be clearly addressed by the PAE Attorney in the Closing Escrow Instructions (e.g., when bridge loan funds are received in lieu of tax credit equity at closing, and they obtain a larger construction/interim take-out than reflected in Exhibit F because it includes tax credit equity, etc.). If the discrepancies are not clearly addressed, the Closing Escrow Agent must follow-up with the PAE Attorney as the claim may have been sized too large.
- 6. Sources reflected on Exhibit F Sources and Uses but NOT received. If funds are reflected on the Exhibit F Sources and Uses and in the Closing Escrow Instructions (e.g., HOME loan funds) but are not received, the Closing Escrow Agent must follow-up with the PAE Attorney as there may be insufficient funds to settle the transaction.
- B. **Disbursement of Funds**. The Closing Exhibit F, Sources and Uses statement will be the source document for the Closing Escrow Agent's disbursement instructions. Any items not captured on the Final Sources and Uses Statement will be captured in the Closing Escrow Instructions. The following disbursements are generally made from the Closing Escrow:
  - 1. Payoff of existing insured or HUD-held loan.
    - a) **Existing Insured Mortgage**. The Closing Escrow Agent must disburse to the existing insured mortgagee (or servicer, if delegated authority provided by mortgagee), the amount specified in Exhibit F to satisfy the existing insured loan. Funds must be disbursed based on wiring instructions and authorizations from the existing mortgagee (payoff may be reduced by amount of existing escrows held by that lender if addressed in Closing Escrow Instructions and RC).

- b) **Existing HUD-held Note**. The Closing Escrow Agent must disburse to HUD the amount specified in Exhibit F as partial payment on the existing HUD-held loan (may be reduced by the amount of existing HUD-held escrows provided they were included in Sources on Exhibit F). Funds must be sent to HUD Multifamily Notes Servicing Branch by check to be applied to the existing HUD-held Note. See 7-6E below for specific instructions for remitting funds to HUD.
- 2. Transaction Costs including (but not limited to) fees to the old and new lender, the title company, survey fees, accounts payables, etc. Transaction costs are lumped on a single line on the Closing Exhibit F and must therefore be addressed in detail in the Closing Escrow Instructions.
  - a) **Up-front Mortgage Insurance Premium (MIP)**. If there is new FHA insurance after closing, the up-front (first year's) MIP must be paid (by the mortgagee) at closing to HUD. The up front MIP amount is included in transaction costs payable to the mortgagee.
    - i. The OAHP Preservation Office (PO) will provide an official receipt Form HUD-27038, and schedule Form HUD-3416 for the Closing Escrow Agent or PAE to prepare at closing. The Closing Escrow Agent or PAE, as appropriate, will provide copies to the PO upon execution. (Refer to OPG Appendix N, Attachment 2 Receipt Instructions for information on receipt and schedule numbering and submission to HUD.)
    - ii. At closing, the Closing Escrow Agent will issue the official receipt for the up-front MIP from the lender and forward the original check with the original receipt and schedule to the Department of Housing and Urban Development, Box 277167, Atlanta, GA 30384-1767. Checks or receipts from different Section 223(a)(7) closings should be sent to the lockbox separately.
    - iii. A copy of the receipt must be sent to the new lender.
    - iv. A copy of the receipt and the check must be retained by the PAE to be included in the closing dockets and Form 290 Closing Memorandum Package (See Appendix N for 290 instructions).
  - b) New Reserve for Replacement, Tax and Insurance Escrows. The Closing Escrow Agent should disburse said funds to the first mortgagee to be held in an escrow account. In the event that the existing mortgage is 100% written down, and there is no new take-out lender (HUD in first position

after closing), the HUD Multifamily Notes Servicing Branch will service the loans and escrows. In this event, the Closing Escrow Agent should disburse the escrow funds to the HUD Multifamily Notes Servicing Branch, clearly identifying the amount and name of each new account. See 7-6E below for specific instructions for remitting funds to HUD.

If the owner wants the Reserve for Replacement invested, a letter must be sent requesting investment instructions to the HUD Multifamily Note Servicing Branch. See 7-6C below for specific instructions for that address.

- 3. Rehabilitation Escrow Account. Where the restructuring transaction provides financing for rehabilitation needs (twelve-month physical needs other than those that the owner must correct prior to approval of the Restructuring Plan), the owner must establish a rehabilitation escrow account. The Rehab Escrow Administrator will be specified in the Rehab Escrow Agreement executed at closing, usually the new first mortgage lender.
- C. Excess Funds/Shortfalls at Settlement. Since many transaction costs included in the Exhibit F Sources and Uses are estimates at the time the claim amount is determined and the closing is scheduled, it is not uncommon for there to be a slight surplus or shortage of funds at the Closing table.
  - 1. <u>Shortfalls</u>: The RC specifically states that in the event that the actual transaction costs associated with the Transaction exceed the estimated amount, OAHP will not permit any such excess costs to be financed by the New Loan. It further states the Owner shall be solely responsible for bringing any such excess funds to the closing table.
  - 2. Excess funds at Closing: In the event that the actual transaction costs are less than estimated, any excess funds remaining will generally be sent to HUD, MF Notes Servicing Branch to be applied as a partial payment toward the Mortgage Restructuring Note effective the date of closing. Specific instructions must be addressed in the Closing Escrow Instructions. Refer to paragraph 7-6C below for specific instructions for sending payments to HUD MF Notes Servicing Branch. Although the Owner generally contributes toward transaction costs, the owner's cash contribution should not be reduced at closing when transaction costs are less than estimated. Such a reduction is inappropriate because the owner's Capital Recovery Payment (CRP) is based on the owner's estimated contribution. In order to return a portion of the excess to the owner would require adjusting

- (reducing) the CRP (and making necessary revisions to closing documents) and is not feasible.
- D. Excess Bond Reserve Funds (Generally After Closing) When existing mortgage loans funded with bond proceeds (typically tax-exempt housing bonds) are prepaid, the Trustee for the bonds is required to do a final accounting of the bonds. The final accounting includes, in addition to paying bondholders, the disposition of all bond accounts. The Trustee performs the final accounting in accordance with the terms of the trust indenture (or bond resolution). The trust indenture also dictates the party to whom any final balances should be sent: HUD, in many instances. The PAE must provide the Trustee with instructions for sending the final balances to HUD as part of the Closing process (wire is the preferred method).
  - 1. When the indenture requires that excess bond funds come back to HUD (generally required), refer to paragraph 7-6E. below for specific address and wiring instructions for HUD MF Claims Branch. The transmittal memo, required for wires or checks, must identify the original FHA project name and number, and state that the funds are excess bond funds to be posted to the FHA Fund, Miscellaneous Income Account. Provide a Trustee name and contact phone number for questions.
  - 2. If the indenture requires a different application, contact the OAHP HQ Closing or HQ Bond Departments for specific guidance.
- E. Sending Payments TO HUD Specific Instructions for Checks and Wires. These instructions are applicable when funds are sent to HUD at or subsequent to M2M Closing. It is essential that a transmittal be included with ALL payments to HUD, providing detailed information on how the funds are to be applied. Failure to direct the funds clearly to the appropriate entity or send to the wrong address will result in funds not being properly applied. Questions regarding receipt of payments, wiring instructions, issuance of official receipts, and determining whether payments to HUD should be sent to HUD Claims or Notes Servicing, may all be directed to OAHP HQ Closing.
  - 1. HUD Multifamily Claims gets payments that will not be applied to the M2M project debt or new HUD-held escrows. This includes, but is not limited to, excess bond reserve funds, excess New Reg. Residual Receipts, or other payments to HUD that will not be applied to the M2M project debt (e.g., if no M2M debt at time of transmittal of funds because QNP debt assignment or forgiveness has already been booked by HUD). It is critical that the sender (escrow agent, old lender, owner, etc) include the

following information in the transmittal memo: identify themselves and provide a contact name and phone number, the original FHA project name and number, explain the reason the funds are being transmitted (e.g., excess bond reserve funds or excess New Reg. Residual Receipts) and specify that funds are being sent to HUD Multifamily Claims to be posted to the FHA Fund, Miscellaneous Income Account. Provide contact name and phone number for questions.

a) Make Checks payable to the Secretary, Department of Housing and Urban Development and mail with transmittal to:

HUD Multifamily Claims Branch PO Box 44003 Washington DC, 20026.

- b) Wires for payments for Excess bond reserve funds will be accepted ONLY from the Bond Trustee. Wires are STRONGLY discouraged from all other payees. Wired funds are the most difficult to properly account for, especially when the transmittals are often incomplete. Contact MF Claims at 202-401-2168 for wiring instructions. Do not reuse wiring instructions previously received from Claims (and never modify wiring instructions from a different Branch). Always call Claims for new deal-specific guidance if a wire will be sent.
- 2. HUD Multifamily Notes Servicing gets payments that will be applied to project-specific HUD-held accounts (MRN, CRN, escrows, etc). This includes but is not limited to funds from the old lender or M2M closing escrow agent to establish new HUDheld escrows, excess funds from the M2M closing escrow, excess Old Reg. Residual Receipts, annual debt service on the M2M debt, excess funds from the Rehab Escrow (after completion of work) or other such payments to HUD that will be applied to the M2M project debt. In the transmittal memo it is critical that the sender (escrow agent, old lender, owner, etc.) identify themselves with a contact name and phone number, identify the original project name, FHA project number for the M2M debt (old FHA number with a V (for the MRN) or W (for the CRN)), explain the reason the funds are being transmitted and how they are to be applied (e.g., to R4R escrow, excess claim proceeds to be applied as a payment on the MRN effective the date of Closing, excess Old Reg. Residual Receipts to be applied to the MRN effective the date of Closing, or funds to establish new HUD-held reserve account, etc.). Provide contact name and phone number for questions.

a) Make Checks payable to the Secretary, Department of Housing and Urban Development and mail with transmittal to:

Multifamily Notes Servicing Branch HUD Multifamily Payment Processing Center PO Box 70764 Chicago, IL, 60673

- b) If funds would be normally be applied to the MRN/CRN but there was either none created at closing, or they have been assigned or forgiven by HUD (OPG Appendix C), then payment must be made to HUD Multifamily Claims (see above) to be applied to the FHA Fund, Miscellaneous Income Account.
- c) Wires are STRONGLY discouraged for the above payments. Wired funds are the most difficult to properly account for, as transmittals are too often incomplete. If necessary, contact MF Notes Servicing at 202-708-4035 (attention Debbie Courtright at ext. 2753) for instructions. Do not reuse wiring instructions previously received from Notes Servicing (and never modify wiring instructions from a different Branch). Always call Notes Servicing directly for new deal-specific guidance if a wire will be sent.
- 3. <u>HUD Multifamily Insurance Operations Branch gets checks ONLY for upfront MIP payments</u>. Checks must be sent via the Atlanta lockbox with Receipt Form HUD-27038, and schedule, Form HUD-3416 (no wires). Note: no other payments should be directed to this address! See 7-6B2 above and OPG Appendix N for information on required documentation to accompany the check (receipt and schedule).
  - a) Make Checks payable to the Secretary, Department of Housing and Urban Development and mail with transmittal to:

MF Insurance Operations Branch Department of Housing and Urban Development Box 277167 Atlanta, GA 30384-1767

## **Settlement Statement**

Section 7-7

OAHP requires a Final Settlement Statement after closing a M2M transaction to document the actual flow of funds at Closing, enabling OAHP to book the transaction and track payments due to HUD from Closing Escrows. Deadlines

established herein for submission of settlement statement documents and closing out the closing escrows refer to the date of "Closing". In this context, "Closing" refers to the date the PAE Attorney signs the Attorney's Certification, forms 7.8, 7.11 and/or 7.14 as appropriate.

The PAE must assure that these requirements related to Final Settlement Statements are addressed in the Closing Escrow Instructions. Refer also to the Resource Desk for additional Questions and Answers to further clarify these requirements.

- A. Disbursement Statement and/or Settlement Statement. Settlement Statements, documenting the actual flow of funds at Closing, are generally prepared by Closing Escrow Agents. If instead, a Settlement Statement is prepared by the PAE Attorney, OAHP requires that the Closing Escrow Agent provide OAHP and the PAE a copy of their Disbursement Statement immediately after closing (max 3 days). Using that Disbursement Statement, the PAE Attorney may then prepare the detailed Settlement Statement required so OAHP can book the transaction and track payments due to HUD from Closing Escrows. The combination of the two documents will provide a good roadmap of the transaction.
  - 1. <u>Disbursement Statement (optional)</u>. This is an optional document prepared and signed by the Closing Escrow Agent showing the accounting of funds in and out of the Closing Escrow and is generally necessary under state licensing and insurance requirements. A Disbursement Statement often shows the gross amounts of funds in and out of the escrow (no items paid outside of closing (POC)), with lump sum check amounts and payees. Using the Disbursement Statement, RC and Closing Escrow Instructions, the PAE attorney should then prepare the Settlement Statement and attach both to the new Form 7.21 (see below).
    - a) A separate disbursement statement is required only if the Closing Escrow Agent does not prepare and sign the Final Settlement Statement.
    - b) A Disbursement Statement alone is not acceptable at interim or final submission.
    - c) The Closing Escrow Agent must sign the new Form 7.21, even if they sign a Disbursement Statement in lieu of a Settlement Statement.
  - 2. <u>Settlement Statement (SS)</u> summary statement prepared by PAE Attorney and/or Closing Escrow Agent reflecting the flow of funds into and out of the escrow as well as funds that will be Paid Outside of Closing (POC) either from old lender to new lender, or from old lender to the Closing Escrow Agent,

- following closing. This statement must be consistent with the escrow Disbursement Statement (if applicable) but must provide a much more detailed summary and breakout of the individual line items that were included in a given check to a payee (or funds received from another source).
- a) For example, the Disbursement Statement might show a check # XX was sent on 9/14/2004 to "Old Lender" in total amount of \$XXX. The Settlement Statement must provide a breakout of how that figure was arrived at, such as: principal XXX, + interest XXX, + prepayment premium XX, existing tax XXX, ins XXX, residual receipts XXX, R4R XXX and -MIP XXX escrow balances.) The SS must reflect the actual flow of funds through the escrow in accordance with the Closing Escrow Instructions from the PAE attorney to the Closing Escrow Agent.
- b) The Settlement Statement must include a separate line item for each source and disbursement so that the flow of funds can be traced.
- B. **Interim and/or Final Statements**. Statements must be clearly labeled interim or final, reflecting whether the closing escrow has been closed out and all funds disbursed.
  - 1. <u>Interim Settlement Statement (and Disbursement Statement, if applicable)</u>. If funds remain undisbursed and/ or have not yet been received, within 3 days of Closing, the Closing Escrow Agent must submit an interim statement identifying funds disbursed, received and remaining in the escrow. The document must be clearly identified as an Interim Settlement Statement (or Interim Disbursement Statement). A separate Interim statement is not required if the escrow has been closed out and there are no undisbursed funds. Instead, submit only a Final Settlement Statement immediately (3 days) after closing.
  - 2. Final Settlement Statement (and Disbursement Statement if applicable). A Final Settlement Statement (FSS) must be provided once the Closing Escrow has been closed out and all funds have been disbursed. If all funds are disbursed at the closing table, a FSS may be submitted within 3 days and an interim statement is not required. A FSS must be provided within 3 days of final disbursement. The PAE Attorney and Closing Escrow Agent must both sign the FSS (and/or escrow agent may sign Final Disbursement Statement if applicable).
  - 3. <u>Format for Interim/Final Settlement Statement</u>. OAHP encourages, but does not require, use of the HUD1 or HUD 1A for the Final Settlement Statement. It is essential that the Statement be accurate and unambiguous to those of us using it at

- OAHP. In lieu of mandating a specific OAHP format for the FSS, we developed Form 7.21 (see D) below), that must now be signed and submitted by the Closing Escrow Agent AND PAE Closing Attorney with the Interim/FSS immediately after closing (max 3 days).
- C. Maximum time for Closing Escrows to remain open. All funds should be disbursed and the closing escrow closed out immediately after Closing. A FSS must be provided within 3 days of final disbursement. However, in no event should a Closing Escrow remain open more than 30 days after Closing. If funds remain undisbursed at that time, the PAE attorney must instruct the Closing Escrow Agent to remit all excess funds to HUD, unless HQ Closing has approved in writing (in advance) an extension to the Closing Escrow term.
- D. **Transmittal/Certification Form 7.21 (mandatory)**. The new Form 7.21 will be used to officially notify OAHP HQ Closing and the PAE when the escrow is closed out and to clarify items on the settlement statement documents. Attachments to the Form 7.21 include a copy of the PAE's Closing Escrow Instructions to the Closing Escrow Agent, Interim and/or Final Settlement Statements and Disbursement Statements if applicable.
  - 1. The PAE Attorney and Closing Escrow Agent must both sign the Form 7.21 at the time of each submission to OAHP (e.g., at interim and again at final), certifying that:
    - a) the settlement/disbursement statements attached are correct, and reflect the actual flow of funds through the closing escrow,
    - b) the settlement/disbursement statements attached are consistent with Form 7.21, and
    - c) whether or not the escrow is closed and all funds have been disbursed.

The certification statements for the PAE Attorney and Closing Escrow Agent on the 7.21 vary slightly, reflecting the PAE Attorney's greater involvement in the overall transaction.

E. PAE Controls To Track Closeout And Final Disbursements. PAEs must have controls in place to track the close out and final disbursement of funds from each Closing Escrow. OAHP will audit the status of Closing Escrows for closed transactions. PAEs must take steps to assure Closing Escrows are closed out promptly.

## Partial Payment of Claim (PPC) and the PPC Package

Section 7-8

- A. General. The 541(b) claim payment is the most important part of the full restructuring transaction and the most difficult to implement in a timely manner. The following process was developed to ensure all necessary information has been provided and authority given to request payment from the FHA insurance fund. The information compiled for the Multifamily Claims Branch must be in its office NO LATER THAN FIFTEEN (15) days prior to the funding request. If the information is not received by that time or is incomplete, the funding and/or closing date of the transaction will be adjusted accordingly. If there is no 541(b) claim payment as part of the transaction, refer to Section 7-11, HUD-held Notes or 7-12, Non-HUD-held/Non-541(b) Restructurings, as appropriate.
- B. Preparation of Partial Payment of Claim Package and Other Internal Control Documents. HUD's Multifamily Claims Branch must have sufficient advance notice of the Section 541(b) Claim.
  - 1. Immediately following the owner's execution of the Restructuring Commitment, the PAE notifies the existing mortgagee of the debt restructuring, provides a copy of the Restructuring Commitment, and requests the necessary information and documentation.
  - 2. The existing mortgagee should provide the requested information within a few weeks of the request. At least 45 days prior to closing, if necessary, the PAE should follow up with the existing mortgagee in order to ensure timely receipt of the information. The existing mortgagee should submit the documents directly to the Closing Escrow Agent, with a copy of the package to the PAE via mail or fax. The Closing Escrow Agent will arrange with the PAE for the delivery of the appropriate documents for inclusion in the Partial Payment of Claim Package.
  - 3. At Least Eighteen (18) Days Prior to Closing. The PAE business staff assembles the Partial Payment of Claim Package which contains the documents listed in the Claim Payment Checklist (Form 7.4):
    - a) Form 7.4 Claim Payment Checklist
    - b) Form 7.5 Claim Payment Summary
    - c) Form 4.11 F47 Clearance Certification or Form 4.12 F47 Reconciliation Form, whichever is applicable
    - d) Restructuring Commitment, including Sources and Uses and Special Terms and Conditions
    - e) Certification of Mortgage Balance (from existing mortgagee)
    - f) Wiring Instructions for Partial Payment of Claim, Payment Information Form HUD-1044D. The form is available

## through HUDCLIPS and at:

http://www.hud.gov/offices/hsg/omhar/readingrm/opglinks.cfm, scroll down and click on Chapter 7 Forms. Scroll to the bottom of the forms page, look under the heading Additional Forms. Note: the 1044D anticipates that the claim payment will be wired directly to the HUD insured Mortgagee and therefore asks for the name of the mortgagee in block 1. Instead, enter the exact Bank Account Name for wiring the claim funds – this name must match exactly the name shown in Section III. of Form 7.5.

- g) Written Authorization from Existing Mortgagee for Payment to be Sent to Servicer or Other Entity and official corporate resolution naming corporate officers.
- h) Form 7.6 Application for Section 541(b) Claim Payment
- i) Mortgagee Record Change (HUD 92080) (if applicable)
- j) Insurance Termination Request for Multifamily Mortgage (HUD 9807)
- 4. At Least Sixteen (16) Days Prior to Closing. The OAHP Preservation Office should prepare and execute, as necessary, and submit to OAHP HQ Closing the Partial Payment of Claim Package. If there are any problems with the information submitted, OAHP HQ Closing will notify the Preservation Office Closing Coordinator.
- 5. At Least Fifteen (15) Days prior to Closing. OAHP HQ Closing Department delivers the executed claim documents (Partial Payment of Claim Package) to HUD Multifamily Claims Branch Chief, or designee. If there are any problems with the information submitted, the Multifamily Claims Branch will notify OAHP HQ Closing, who will notify the Preservation Office Closing Coordinator.
- C. **Payment of Section 541(b) Payment**. HUD authorizes payment of the Section 541(b) Claim from Treasury after OAHP triggers payment of the Claim.
  - 1. <u>Notification of OAHP Preservation Office Director</u>. The OAHP Preservation Office Director receives notification of the following, from the PAE attorney in order to authorize the claim submission:
    - a) Appropriate documents have been recorded
    - b) Title policy has been issued
    - c) Form Legal Opinion from the owner's attorney has been received and is acceptable

- d) All prerequisite closing funding requirements have been met, including receipt of all funds necessary to close the transaction
- e) Upon receipt of Section 541(b) Payment, the Closing Escrow Agent is prepared to disburse payments as necessary
- 2. The OAHP HQ Closing Department will notify the HUD Multifamily Claims Branch Chief or designee, via email and follow up telephone call that authority is granted to submit the request for Section 541(b) Payment.
- 3. <u>HUD's Multifamily Claims Branch Chief or Designee</u>. Upon receipt of proper notification from the OAHP HQ Closing Department, the HUD Multifamily Claims Branch Chief or designee submits the request to the appropriate Treasury office to wire transfer the funds in accordance with the wiring instructions provided earlier. Note: HUD or Treasury cannot provide a wire confirmation number to the Closing Escrow Agent. All parties must contact the Closing Escrow Agent to determine when HUD funds are received in the Closing Escrow.

## **Closing Document Preparation, Execution, and Recordation**

Section 7-9

- A. Completion of Closing Documents. The PAE attorney, working with the Closing Escrow Agent, the owner, the owner's attorney, an attorney for the existing mortgagee (in the case of a loan modification) or the new mortgagee, and Multifamily Hub or Program Center if FHA-insured (in the case of 221(d)(4) or 223(f) take-out financing), must oversee the completion of all closing documents and provide copies and the Certification of Closing Documents (Form 7.3) to the OAHP Preservation Office Director. For more specific guidelines for completing the legal documents, see Closing Instructions to PAE Attorney in Appendix F.
  - 1. <u>Timing</u>. Document preparation starts as soon as the owner receives closing instructions from the PAE. It should take no more than forty-five (45) days. All documents should be completed and submitted to the PAE (or the Closing Escrow Agent, as applicable) at least ten (10) days prior to closing, with the exception of the HUD Multifamily Claims documents. (See Section 7-8 above for a detailed explanation of the claim payment process.)
  - 2. Legal Requirements.
    - a) **Hiring an Attorney**. The PAE should use an attorney experienced in multifamily restructuring finance (including

- FHA insurance programs) to complete the closing documents. Any outside attorney will be subject to the conflict of interest rules. The PAE Attorney is responsible for drafting all M2M legal documents and for reviewing all legal documents in the closing.
- b) **Paying Attorney's Costs**. Attorney fees will be recognized to the extent allowed in the Portfolio Restructuring Agreement (PRA).
- c) Using Standardized Documents. The PAE attorney shall use the standard form closing documents provided by OAHP and HUD that are appropriate to the first mortgage financing alternative agreed to under the terms of the Restructuring Commitment. "Standard form closing document" means that neither the PAE attorney nor any other party is permitted to alter the document, except for changes required under state law, such as notary acknowledgments.
- d) Using Form 7.3, the PAE attorney must certify that all standard form legal documents are complete, accurate, executed, and consistent with the terms of the Restructuring Commitment as shown on the Official Term Sheet Form 7.19 and with the other documents.
- 3. General Instructions for Completing Closing Documents. The PAE attorney has primary responsibility for preparing the OAHP legal documents and in completing or reviewing Section 223(a)(7) required closing documents. For additional guidance, see Form 7.2 Closing Document Checklist, and Closing Instructions to PAE Attorney in Appendix F.
  - a) **FHA Number**. If there will be FHA-insured take-out financing, the new FHA Project Number should be typed on each take-out financing closing document if not otherwise included in the document. (The PAE contacts the local Multifamily Hub or Program Center for the new FHA number.) The old FHA number should be typed on each OAHP closing document. In most cases, the first five digits of the FHA# should be identical to the existing FHA#. In all cases, the last three digits should be higher than the existing FHA#.
  - b) **Specific State and Local Requirements**. Any changes in the forms required by state or local law must be set out in an addendum to the document with a statement clarifying that the change is required by State or local law and must include specific citations to the state or local law requiring the change.

- c) Recorded Documents. The PAE Attorney is responsible for capturing all recorded documents after recordation. Each recorded document must contain the return address of the PAE Attorney.
- 4. <u>Cooperating with the Owner's and Mortgagee's Attorneys</u>. The PAE attorney should work closely with the owner's attorney and mortgagee's (or loan servicer's) attorneys to complete the closing documents.
- 5. Wiring Instructions and Address for Disbursements. The PAE should obtain instructions from all working parties with payments to settle at closing and address them in the Closing Escrow Instructions (see 6 below). HUD must be included as often excess funds after final settlement must be sent to HUD (see paragraph 7-6E). Instructions should include the following information:
  - a) Wiring numbers for lenders or servicers
  - b) Names, addresses, telephone numbers and points of contact
  - c) Tax identification numbers
- 6. Closing Escrow Instructions from the PAE Attorney to the Closing Escrow Agent.
  - a) Preparation and Review. About forty-five (45) days prior to closing, the PAE attorney is responsible for drafting instructions for the Closing Escrow Agent who will be responsible for the closing escrow. The instructions must include specific information in order to close the escrow correctly and expeditiously. It is suggested that all parties utilize the closing escrow instructions to include their triggers and facilitate clear coordination of effort. The OAHP HQ Legal Liaison and HQ Closing Department may review the instructions for accuracy and completeness. The instructions should include the following information:
    - names, addresses, points of contact, and other contact information for all parties to the escrow, including HUD departments;
    - ii. wiring instruction or payment information from all parties as applicable (reminder, HUD is usually the recipient of any excess funds after final settlement so instructions for wiring or other payment to HUD must be included, see paragraph 7-6E);
    - iii. all required executed and miscellaneous documents (including Section 8 documents);

- iv. all sources of funds (including other sources when processed in accordance with OPG Appendix R as an Additional Funds transaction);
- v. all disbursements of funds and specific information regarding the timing and recipient of funding;
- vi. identify any funding sources that will not be available at the time of closing that have been accepted by OAHP (specifically addressed in the RC for delayed pay-in);
- vii. specific funding instructions if all funds will not be funneled through the escrow (e.g., notification of receipt of funds from the mortgagee, etc.);
- viii. if take-out financing includes construction financing (draws up to a maximum amount over time in lieu of a permanent loan all disbursed at closing) address requirements documenting availability of funds;
- ix. specific requirements relative to application of any excess funds (see 7-6C.2.);
- x. the order in which documents must be recorded; and a clause stating that the executed Release of Mortgage will not be recorded until the disbursement to the existing mortgagee has been made.
- xi. Provide specific instructions for remitting any funds to the HUD (reflecting each appropriate (different) mailing address as specified in 7-6E)
- xii. require preparation and submission of interim/final settlement documentation as required in 7-7 above
- xiii. Require preparation and submission of Closing Escrow Agent's disbursement statement within 3 days of Closing or within 3 days of final disbursement if funds were undisbursed at the earlier submission.
- xiv. Require that all funds be disbursed and the closing escrow closed out immediately after Closing but in no event greater than 30 days after Closing. If funds remain undisbursed at that time, the PAE attorney must instruct the Closing Escrow Agent to remit all excess funds to HUD, unless HQ Closing has approved in writing (in advance) an extension to the Closing Escrow term.
- xv. method of unwinding the escrow if the closing does not occur.

- b) At least thirty (30) days prior to closing, the Closing Escrow Agent should execute the Escrow Instructions and return it to the PAE attorney.
- c) Prior to execution of documents, the owner must execute the Escrow Instructions. The unwind feature of the escrow instructions will have no value if the owner has not agreed in writing prior to closing.

#### B. Managing Closing Document Execution.

- 1. PAE Attorney's Central Coordinating Role. The PAE attorney manages closing document execution and confirms that the appropriate parties receive, execute, notarize (as needed), and return all documents to the appropriate parties. All documents may be forwarded to the PAE, who in turn will ensure that the Closing Escrow Agent receives the documents in a timely manner. The exception to this rule is the existing mortgagee. In order to minimize confusion, the existing mortgagee is requested to forward all documents directly to the Closing Escrow Agent. The Closing Escrow Agent will coordinate with the PAE Attorney regarding documents requiring PAE administration.
- 2. Preparation, Execution and Distribution of Closing Documents. The Closing Document Checklist (Form 7.2) provides required standard form closing documents for most financing arrangements. (If a specific financing arrangement is not listed, contact OAHP HQ Closing for assistance.) The PAE Attorney prepares the M2M closing documents, reviews the documents for accuracy, completeness, compliance with the Official Term Sheet, and the Restructuring Commitment, arranges for PAE business staff and OAHP Preservation Office review of the documents; arranges for execution of the documents, reviews take-out financing loan documents for consistency with the Restructuring Commitment and coordinates the Closing Date and Closing structure with the Closing Parties.
- 3. <u>Title Insurance</u>. With respect to the status of title to a project, for review and certification purposes, the PAE and PAE Attorney may rely upon such title reports, title commitments, new title policies, or other endorsements to an existing title policy provided by the title company. See Title Instructions in Appendix F for specific title requirements.

## C. Review and Certification of Legal Documents.

- 1. When the owner, new mortgagee and existing mortgagee have properly executed all relevant closing documents, the PAE Attorney must review them to ensure they are complete, have not been altered, and conform to the terms and conditions of the Official Term Sheet, Restructuring Commitment and Firm Commitment for FHA Insurance, if applicable. At least nine (9) days prior to closing, after the appropriate parties have executed the closing documents, and the PAE Attorney has approved them, the PAE Attorney should forward the partially-executed closing documents that require OAHP's execution to the OAHP Preservation Office with the following information:
  - a) Certification of Closing Documents (Form 7.3)

- b) Legal Opinion of Owner's Attorney (Appendix F)
- 2. Review by OAHP Preservation Office. The OAHP Preservation Office staff should conduct a full detailed review of the documents to ensure that all appropriate documents are included (using the Closing Document Checklist Form 7.2) and all documents are consistent, comply with the approved deal as revealed by the Official Term Sheet Form 7.19 and Restructuring Commitment, and correct and complete and are properly executed.
- 3. Execution by OAHP Preservation Office. The OAHP Preservation Office Director should execute the appropriate closing documents as outlined in Form 7.2 Closing Documents Checklist, and as advised by the PAE Attorney.
- 4. Returning Documents to the Closing Escrow Agent. The OAHP Preservation Office Director should return the executed closing documents directly to the Closing Escrow Agent, or as instructed by the PAE Attorney, at least five (5) days prior to closing by overnight mail, and notify the PAE that this has been completed. The PAE Attorney should determine the logistics of this action based on the Closing Escrow schedule.
- D. Closing Escrow Agent Document Holding. The Closing Escrow Agent captures all closing documentation from the PAE, the OAHP Preservation Office, and the existing mortgagee, whether or not the document requires recordation. The Closing Escrow Agent will capture all funds from applicable parties, disburse funds as instructed, and ensure the recordation of all necessary documents in the appropriate order. The Closing Escrow Agent will provide to the PAE all remaining unrecorded, executed documents to be filed in the appropriate closing dockets.
- E. **Setting Closing Date and HUD Funding Date**. The PAE, the title company, and the Closing Escrow Agent must coordinate with one another, as well as the OAHP Preservation Office, the OAHP Closing Coordinator, and any other interested parties, to set a closing date. At least thirty (30) business days prior to closing, the PAE should work with all parties to set a final date. In addition, when a 541(b) Claim payment is required, the PAE must coordinate with OAHP HQ Closing to obtain a slot on the funding calendar that will work with the schedule for document execution and recordation. The requested funding date must be included in the Partial Payment of Claim Package.
- F. Transmitting Closing Information from the PAE to All Working Parties. After coordinating reviews and establishing the closing date, the PAE should prepare and send a transmittal letter to all working parties. The letter should: 1) be sent within five (5) days of

the final closing date; 2) advise that the closing documents are complete and conform to the Restructuring Commitment and the Firm Commitment (if applicable); 3) indicate the final date of closing; and 4) provide instructions for completing an escrow closing.

## G. Recordation and Effective Date of Closing.

- 1. Recordation. The order of recordation should be:
  - a) Release of Regulatory Agreement;
  - b) M2M Use Agreement;
  - c) Section 236 Use Agreement, if there is no new take-out financing; if there's new take-out, record after the UCC for the new take-out financing.
  - d) Subordination Agreement of Existing FHA-insured Mortgage (if loan modification);
  - e) New First Mortgage, Modification of FHA-insured Mortgage, or Modification and Subordination of HUD-held Mortgage;
  - f) New FHA First Mortgage Regulatory Agreement with M2M Rider:
  - g) UCC Financing Statements for first Mortgage Note (recorded with appropriate governmental agency(ies))
  - h) Mortgage Restructuring Mortgage/Deed of Trust with M2M Rider;
  - i) Appropriate FHA Regulatory Agreement with M2M Rider for Mortgage Restructuring Mortgage;
  - j) UCC Financing Statements for Mortgage Restructuring Note (recorded with appropriate governmental agency(ies))
  - k) Contingent Repayment Mortgage with M2M Rider;
  - Appropriate FHA Regulatory Agreement with M2M Rider for Contingent Repayment Mortgage;
  - m) UCC Financing Statements for Contingent Repayment Note (recorded with appropriate governmental agency(ies))
  - n) Release of existing Mortgage/Deed of Trust;
  - o) Release of existing Security Agreement (if applicable);
  - p) UCC Termination Statements
- 2. <u>Closing Completed</u>. Closing is complete when the PAE attorney notifies OAHP HQ Closing that the Closing Escrow is closed out, all funds have been disbursed and a Final Settlement

- Statement and Form 7.21 have been provided to OAHP HQ Closing.
- 3. Immediate Closing Submissions to OAHP Immediately after closing (max 3 days), the Closing Escrow Agent and/or PAE must fax to OAHP HQ Closing a copy of the signed settlement statement, the endorsed first lien note, the M2M notes and mortgages, final Exhibit F, Form 7.16, W-9, and, if there is no take-out financing, a copy of the most recent tax bill.

## H. Endorsement for Full Mortgage Insurance under Section 223(a)(7).

- 1. <u>Conditions for Endorsement</u>. The OAHP Preservation Office Director will endorse the Note for full mortgage insurance when all of the following have occurred.
  - a) All required Section 223(a)(7) insured mortgage closing documents, and all M2M required closing documents to consummate the restructuring transaction, have been properly executed, notarized, as needed, and recorded.
  - b) All of the conditions of the Firm Commitment have been satisfied.
  - c) All of the conditions of the Restructuring Commitment have been satisfied.
  - d) The mortgagee has paid the initial mortgage insurance premium, equal to the first year's payment, in the case of Section 223(a)(7) mortgage insurance.
  - e) Request for Final Endorsement of Credit Instrument (FHA Form 92023) has been executed by the new mortgagee and mortgagor and delivered with the Note to be endorsed for FHA mortgage insurance. The mortgagee must make appropriate arrangements for handling the original promissory Note, both before and after endorsement.
  - f) Title Policy for the Section 223(a)(7) insured mortgage has been issued as per the Title Insurance Instructions set out in Appendix F.
- 2. <u>Required Actions Immediately Following Endorsement</u>. Immediately following endorsement for full FHA mortgage insurance, the OAHP Preservation Office should:
  - a) follow the established procedures for paying mortgage insurance fees and premiums (see Section 7-6.B.2.a.);
  - b) fax a copy of the endorsed Note to the insured mortgagee and deliver the original endorsed Note directly to the insured

- mortgagee in accordance with the arrangements made in advance by the mortgagee.
- c) forward the Closing Memorandum (HUD Form 290) and backup documentation to the OAHP Closing Specialist in OAHP HQ (see Chapter 8, Internal Document Distribution and OPG Appendix N (for 290 instructions))
- I. Endorsement under Section 542(c) HFA Risk-Sharing or Section 542(b) GSE Risk-Sharing. If the new mortgagee is providing refinancing under the Section 542(c) HFA Risk-Sharing program, the HFA will present to the local Multifamily Hub or Program Center for endorsement at closing: (1) the closing Risk-Sharing docket, and (2) evidence that the initial mortgage insurance premium has been paid to the Mortgage Insurance Operations Branch in the FHA Comptroller's Office in headquarters. Under Section 542(b) GSE Risk-Sharing program, Government-sponsored enterprises (GSEs) that have entered into Risk-Sharing Agreements with HUD may reinsure project mortgages and present mortgage notes to the Multifamily Hub or Program Center for endorsement after the loan has closed. GSEs are prohibited from refinancing their own loans without prior HUD approval.
  - Conditions for Endorsement. If the Multifamily Hub or Program
    Center determines that all documentation and certifications are
    complete and in conformance with the terms and conditions of
    the Restructuring Commitment and Lender's Risk Share
    Commitment, the Multifamily Hub or Program Center Director
    will endorse the Note for mortgage insurance and forward it to
    the Closing Escrow Agent for disbursement.
  - 2. Required Actions Immediately Following Endorsement. Within five (5) days of escrow closing, the PAE must provide complete closing documents to the Multifamily Hub or Program Center with jurisdiction. The Multifamily Hub or Program Center delivers the completed closing memorandum (HUD Form 290) package to the Mortgage Insurance Operations Branch in the FHA Comptroller's Office in headquarters (see Chapter 8 Internal Documentation Distribution).

## Section 221(d)(4) Substantial Rehabilitation or Section 223(f) Refinancing

Section 7-10

A. **General**. The closing process for assets with new FHA insured loans under Section 221(d)(4) and Section 223(f) mortgage insurance follows the closing guidance above, with the exception of the process for closing the first mortgage. The OAHP Preservation Office, Multifamily Hub or Program Center, PAE, new mortgagee,

and owner will follow HUD's current procedures for closing on a first mortgage with a Firm Commitment for FHA mortgage insurance under Section 221(d)(4) or Section 223(f) with the exception that the loan closes concurrently with the Mark-to-Market closing. This Operating Procedures Guide does not include detailed instructions for the first mortgages under these sections.

- B. **Document Execution**. The PAE attorney and business staff will review all mortgage Restructuring documents and ensure consistency between the terms of the FHA mortgage insurance closing and the terms of the Restructuring Commitment before submitting them to the OAHP Preservation Office.
- C. Internal Control. The internal control process will be the same as with other first mortgage financing alternatives. The Section 221(d)(4) and 223(f) closings should be simultaneous with the Markto-Market closing. The closing escrow instructions should include the needs of all parties to ensure an accurate, smooth closing. All funds should flow through the M2M Closing Escrow Agent, including the full loan disbursement from the new FHA insured lender. The HUD attorney closing a Section 221(d)(4) or Section 223(f) loan handles only the new insured take-out the PAE is still responsible for closing the restructuring and must coordinate the entire process. Contact OAHP HQ Closing if there are questions regarding roles and responsibilities.

### **Section 8 HAP Contract**

Section 7-11

The OAHP Preservation Office is responsible for preparation of the appropriate Section 8 HAP Contract, coordinating contract execution, and forwarding the contract to the HUD Multifamily Hub or Program Center for execution. Reservation of Section 8 funds, data tracking, and the many details necessary to initiate and fully implement the Section 8 contract are described in other guidance, and must be coordinated between the OAHP Preservation Office, the PAE, and the Multifamily Hub or Program Center Please contact the appropriate OAHP Preservation Office for more information.

## **HUD-Held Notes**

Section 7-12

A. **General**. HUD-held notes are formerly FHA-insured notes, which have already been through the FHA claim process, and are now assets owned by HUD. A M2M restructuring of a HUD-held note does not require a partial payment of claim at closing. A Closing Escrow Agent is still required to act as third party fiduciary. As mortgagee, HUD must issue a final Payoff Demand. The Payoff

Demand must be fully satisfied through the Restructuring. The OAHP Preservation Office Director must receive required PAE Attorney Certifications and must authorize closing by reviewing for accuracy, comparing with the payoff demand to ensure the existing obligation will be fully resolved and assuring all necessary funds are in the closing escrow. Preservation Office Directors must notify the HQ Closing Department by phone and by email when they have the signed attorney certification in hand (the Form 7.14) and are authorizing the closing. Until this step is completed, the closing is not official. If the closing date is delayed, additional per diem interest will be due to HUD and could result in a shortfall at the closing table. Closing guidance in the balance of Chapter 7 is applicable for HUD-held loans, as modified in this section.

- B. Closing Escrow Agent. The Closing Escrow Agent is a vital part of this closing process and acts as the third party fiduciary (not the PAE nor the Owner). The Closing Escrow Agent has the same responsibilities in the closing as it would for any other closing. A final Settlement Statement is required and must provide sufficient information to resolve the HUD payoff demand and any/all funds in the escrow (see comment in A. above regarding shortfalls if the closing date is delayed). The PAE Attorney and Closing Escrow Agent must sign the Settlement Statement. See Section 7-7 for guidelines on preparing the Settlement Statement.
- C. **Multifamily Notes Servicing**. D Payoff Demand. Since HUD acts as the lender on existing HUD-held notes, the Preservation Office Closing Coordinator must request and receive a final and unqualified Payoff Demand from Multifamily Notes Servicing via fax (Debbie Courtright, Multifamily Notes Servicing Branch Manager, Fax 202 708 619-8408) prior to closing. In addition, Notes Servicing:
  - 1. verifies current escrow balances,
  - 2. permits no escrow disbursements without prior OAHP HQ Closing approval (after issuance of Payoff Demand letter), and
  - 3. disburses funds from existing HUD-held escrows to set up new post-closing escrows (if necessary), based on deal specific instruction from HQ Closing.
- D. **Legal Documentation**. The legal documentation, title insurance and title requirements are the same as a restructuring requiring a claim payment. The Form 7.2 Closing Document Checklist is provided to assist in determining appropriate documentation in various financing alternatives.
- E. **PAE Attorney Certifications**. The PAE attorney provides to the OAHP Preservation Office Director all four Certifications to direct the Closing sequence (when the Restructuring Commitment is ready

- to execute, when the legal documents are ready to execute, when the closing is ready to consummate and when the closing is complete).
- F. HUD-Held Closing Package and Form 7.12. A Form 7.12 HUD-Held Restructuring Summary (the counterpart to the Form 7.5 Claim Payment Summary), Restructuring Commitment with Exhibit A and Exhibit F, HUD Payoff Statement, the Form 7.4a HUD-Held or Non-Claim/Non-HUD-Held Restructuring Summary Checklist (the counterpart to the Form 7.4 Claim Payment Checklist) and Form 7.7 Closing Parties Checklist must be prepared and submitted by the PAE to the OAHP Preservation Office Director for execution prior to closing. The Preservation Office staff forwards the executed Closing Package to HQ Closing.
- G. Upon receipt of the Certification of PAE Attorney Form 7.14, the Preservation Office Director must verify that the transaction is ready to close and contact the HQ Closing Department Manager by phone and email, and trigger the closing (same process as if a claim were involved).
- H. **Projects with a HUD-Held and HUD Insured Loan**. Projects with more than one loan, where at least one loan is still HUD insured and one is HUD-held, require an ad hoc edit to the model. Contact the Resource Desk for assistance. Generally, in such a situation, the project number assigned to the MRN and CRN should match the previously HUD-held FHA project number. Contact HQ Closing for further assistance.
- I. **FHA-Insured Take-out Financing**. If the take-out financing is a FHA insured Section 223(a)(7) loan, the processing is the same as any other Section 223(a)(7). The PAE Attorney will provide a Certification Form 7.8, and the Preservation Office Director will trigger the closing by contacting the HQ Closing Department Manager and triggering the closing, just as if a claim is involved.
- J. **Payments to HUD**. When the existing loan is HUD-held, in addition to routine payments (of excess funds) to HUD from a Closing Escrow, the Closing Escrow Agent must disburse to HUD any funds that are to be applied to the existing HUD-held Note or to fund new HUD-held escrows (if no take-out financing HUD is in first position after closing again). Those payments must be sent to the HUD Multifamily Notes Servicing Branch. Refer to paragraph 7-6E for address and wiring instructions.
  - 1. A transmittal memo must accompany wires and checks, identifying the original FHA project name and number, the reason for the payment and how funds are to be applied (M2M restructuring, apply to the existing HUD-held debt).

- 2. The OAHP PO Closing Coordinator is responsible for submitting a completed Form 7.12 that provides the M/F Notes Servicing Branch all required information to resolve the HUD-Held obligation and address application of all existing escrows being held in trust for the owner. To do this accurately, the Form 7.12 and Exhibit F Sources and Uses must reflect both the existing and new escrow account balances post closing.
- K. Disbursements by HUD from Existing HUD-held Escrows. Application of any existing HUD-held escrow balances must be addressed by the PAE in condition #38 of the Restructuring Commitment (and addressed in Closing Escrow Instructions and in Exhibit F Sources and Uses). Refer to paragraph 7-6A.3. above. When the existing loan is HUD-held, the PAE should generally include the language in #38A.i.of the RC (Escrows to be Deducted from Payoff Amount).
  - 1. After the M2M closing, OAHP HQ Closing staff will review the closing escrow agent's final Settlement Statement and provide specific instructions to HUD for application of the existing escrows. Often the total of the new loan take-out and owner contribution (in Sources) are adequate to fund all the new escrows and funds will be disbursed to the new lender from the closing escrow agent for those escrows. If HQ Closing determines additional funds are needed, will instruct HUD how existing escrow balances are to be disbursed to the new lender and how remaining funds (if any) are to be applied. Generally, if there are funds remaining, they are applied to reduce the write off of the existing HUD-held note.
  - 2. It is essential that Exhibit F Sources and Uses reflect both existing (Sources) and new (Uses) escrow balances so funds can be properly reconciled.
  - 3. Sometimes new lenders may insist they want the existing escrowed funds be deposited in the closing escrow account and disbursed at Closing to prevent the new escrows from not being fully funded. We do not recommend this for HUD-held loans. Such requests must generally be submitted at least one week in advance of closing in order for the funds to be received on the scheduled closing date and it's not uncommon (with M2M Closings), for there to be changes in the identified closing escrow agent (agent name, account number, etc.) immediately prior to closing. This type of change could be very problematic if the escrow funds have already been sent (to the wrong place), and could delay closing. PAEs need to explain these issues and concerns to new lenders.

## L. Closing Wrap-Up.

- 1. The effective date of closing will be the date the documents have been executed and recorded (see 7-9G), the title policy(ies) has been issued, funds have been captured and disbursed by the Closing Escrow Agent and HQ Closing has been notified by phone and email. Since a claim payment is not required, a slot on the funding calendar is not required. The PAE must request a revised payoff from HUD if the closing date slips (will affect per diem interest and possibly other costs).
- 2. <u>Closing</u> Completed Closing is complete when the PAE attorney notifies OAHP HQ Closing that the Closing Escrow is closed out, all funds have been disbursed and a Final Settlement Statement and Form 7.21 have been provided to OAHP.
- 3. Immediate Closing Submissions to OAHP. Immediately after closing (max 3 days), the Closing Escrow Agent and/or PAE must fax to OAHP Closing a copy of the signed settlement statement documentation (see 7-7), the endorsed first lien note, the M2M notes and mortgages, final Exhibit F, Form 7.16, W-9, and, if there is no take-out financing, a copy of the most recent tax bill.

# Non-HUD-Held/Non-541(b) Restructurings – Full Restructurings with no 541(b) Payment

Section 7-13

A. General. For transactions with existing FHA-insured Notes that will not require a Section 541(b) Payment, the PAE business staff and PAE attorney should coordinate the transaction with OAHP HQ Closing. For example, a large balance in the residual receipts account (available to reduce the Section 541(b) Payment amount when it is part of a M2M FULL debt restructuring) may eliminate the 541(b) Payment entirely, instead of just reducing it.

The closing requirements for these are the same as HUD-held and 541(b) transactions, with the exception of the closing authority. Closing guidance in the balance of Chapter 7 is applicable, as modified in this section. Prior to closing, the PAE must provide to the OAHP Preservation Office Director for execution and submission to HQ Closing to request authorization to close the transaction: Form 7.13 Non-HUD-held / Non-PPC Closing Summary (and attachments), and Form 7.4a HUD-Held or Non-Claim/Non-HUD-Held Restructuring Summary Checklist.

B. Excess Residual Receipts and/or other escrows. In some instances, there will be excess funds in the residual receipts and/or reserve for replacement account after restructuring. Disbursement of those excess reserve funds must be addressed in the Restructuring

Commitment and Closing Escrow Instructions. If the RC requires payment of the funds to HUD, the Closing Escrow Agent should disburse in accordance with the instructions in paragraph 7-6E.except that the transmittal should indicate that the funds are to be applied to either:

- 1. HUD's Miscellaneous Income Account when the project is under the New Section 8 Regulations (New Reg) for Residual Receipts (that would belong to HUD at HAP expiration).
- 2. The MRN when the project is under the Old Section 8 Regulations (Old Reg) for Residual Receipts (that would belong to the owner at HAP expiration).
- 3. Refer to the Resource Desk for questions regarding Old Reg/New Reg Residual Receipts.

## **Business Forms, Legal Forms and Appendices**

Section 7-13

## **Chapter 7 Business Forms**

- 7.1 Transmittal Letter from PAE or PAE Attorney to Owner with Closing Instructions
- 7.2 Closing Documents Checklist
- 7.3 Certification of Closing Documents from PAE Attorney to OAHP Preservation Office Director
- 7.3 TPA Certification of Transfer of Physical Asset Documents from PAE to OAHP Preservation Office Director
- 7.4 Claim Payment Checklist
- 7.4a HUD-Held or Non-Claim/Non-HUD-Held Restructuring Summary Checklist
- 7.5 Claim Payment Summary
- 7.6 Application for Claim Payment
- 7.7 Closing Parties Checklist
- 7.8 Certification of Closing Attorney with 223(a)(7) Take-out (execute Form 7.11 or 7.14 in addition, as appropriate)
- 7.9 Notification Letter from PAE to Existing Mortgagee
- 7.10 Reserved
- 7.11 Certificate of Closing Attorney –with 541(b) Payment (execute 7.8 in addition if 223(a)(7) Take-out)
- 7.12 HUD-Held Closing Summary
- 7.13 Non HUD-Held/Non-PPC Closing Summary

- 7.14 Certification of Closing Attorney No 541(b) Claim (execute 7.8 in addition if 223(a)(7) Take-out)
- 7.15 Authorization for Write-Off of M2M Notes and Release of Legal Documentation (OPG Appendix C)
- 7.16 Certification of Mortgagor Information
- 7.17 Docket Review Checklist
- 7.18 Authorization for Assignment of M2M Notes (OPG Appendix C)
- 7.19 Official Term Sheet located in Underwriting Model
- 7.20 Reserved
- 7.21 Transmittal and Certification of Interim/Final Settlement Statement and Closing Escrow Instructions

## **List of Legal Forms**

For a complete list of Legal Forms, see Form 7.2 Closing Document Checklist in Appendix F.

## **Appendices**

Appendix C addresses sales to qualified non-profits and related forgiveness or assignment of M2M debt.

Appendix D contains HUD requirements for TPAs

Appendix F contains the following information:

Guide to PAE Attorney - Closing Documentation

Title Instructions

Mark-to-Market Closing Checklist for Section 223(a)(7)

Standard Form Legal Documents (available on the OAHP web site)

Appendix N describes the HUD requirements for processing a Section 223(a)(7) FHA-Insured Loan

Appendix P addresses requirements when a project has existing Flexible Subsidy Loans including subordination issues to be dealt with at Closing.

Appendix Q describes the requirements for processing IRP re-use for a 236 project and includes language for the Restructuring Commitment and documenting the re-use.

Appendix R describes the requirements for processing a M2M project when new sources of funds are brought to the deal, generally to achieve a greater level of up-front rehab than possible under a standard M2M transaction. These transactions typically involve multiple funding sources with special conditions for funding approval. These conditions must be reviewed and addressed early as they can affect the M2M Closing. Early coordination between the PAE Closing Attorney, OAHP Closing Coordinator, and owner and lender attorneys is essential.